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Federal Communications Commission
Office of the Secretary

Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Commissioners Copps and Adelstein:

Thank you for taking the time to hold field hearings on the rule changes on media concentration which will be considered by the Federal Communication Commission (Commission) this year. I support your efforts to inform the public of the nature of the changes being considered and to provide opportunities for comment. I also applaud your outreach to the western United States where the prospect of a monopoly concentration of the media could have unique impacts on citizens who live in rural and/or remote areas. Due to scheduling conflicts, I am not able to attend the hearing but request that this letter be included in the record of the hearing.

The notice for the field hearing indicated that the Commission will be considering whether to change existing rules on media concentration. It has been reported that the Commission might consider a complete rewrite of the rules and the potential elimination of many of its provisions. I strongly urge the Commission to carefully and strategically explore all of the potential implications of the changes before adopting any significant modifications.

As the Attorney General for the State of Washington, over the past two years our office has had to deal with unintended consequences of sweeping regulatory changes in two areas: energy and financial institutions. Electric and natural gas customers in the western United States were forced to pay exorbitant prices during the energy crisis of the winter of 1999-2000. The energy crisis followed sweeping changes in the regulation of the sale of electricity in California coupled with limited oversight by the Federal Energy Regulatory Commission. Unfortunately, some of the major national firms marketing energy to the west, such as Enron, engaged in a pattern of gaming the deregulated market in ways which substantially increased the prices to consumers. The Attorney General's Office is currently involved in a joint investigation with the Attorney General's Offices of California and Oregon regarding potential illegal practices of companies marketing energy during this period. We have found evidence of a wide range of techniques used to game the regulatory market to the disadvantage of consumers. The Attorney General's Office has also been requesting that FERC take steps to allow refunds of exorbitant energy charges paid by Washington utilities to large national energy marketing firms. 3

Another example of unintended consequences of sweeping regulatory changes is the Financial Services Modernization Act of 1999. This Act eliminated many of the restrictions and limitations on the functions of banks and securities brokers. It was hoped and expected that this new law would strengthen the economy, help consumers and businesses and result in greater competitiveness. Unfortunately, we have found that the elimination of the barriers between banking and securities business may have exacerbated the impact of manipulative accounting

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practices by certain companies. This office is involved in claims by the State Investment Board for losses in value of Enron and WorldCom bonds. Defendants include financial institutions which were involved in both lending to the companies and promoting securities at a time when the company financial status was precarious. The State Securities Division of the Department of Financial Institutions has also been working with other state regulators to impose restrictions on financial institutions which underwrite and also advise potential purchasers of securities.

Based on our experience, in mopping up the impact of the unintended consequences of both regulatory changes, we strongly caution the Commission to thoroughly consider all impacts of the potential rule revisions and consider taking smaller incremental steps rather than making drastic changes.

I also have concerns about antitrust issues related to media mergers and the potential restrictions on access to technology by citizens in western states, particularly those in remote and rural areas. I am concerned we are quickly becoming a nation in which only a handful of conglomerates are going to be controlling both the content and distribution of our information and entertainment. My concern is that these conglomerates will reduce our diversity of programming and create anti-competitive markets in which a handful of companies can assert market power at several points in the artistic and business pipeline. They can use their power to either stifle development of competitive programming or to impede its distribution.

I am especially concerned about the impact on local markets. For instance, we have been informed that media mergers over the past decade have dramatically reduced local ownership of radio stations. Since the passage of the 1996 Telecommunications Act, there are at least 1,100 fewer radio station owners, a decline of 30 percent in six years. In almost half of the largest markets, the three largest corporations control 80 percent of the radio audience. If a national conglomerate controls major media outlets in a community, will a small business still be able to compete for advertising space? Will it become cost-prohibitive for a local merchant to buy ads? Will local newscasts no longer be able to afford to compete with cable and network news channels? These are but a few of the questions the FCC must answer before more mergers are allowed.

I was very heartened by, and I commend you for, your recent work in challenging the proposed Echostar/Hughes satellite merger. As you know, my office, along with my colleagues in other states, joined the Department of Justice in challenging that merger. I was deeply troubled by the prospect that Washingtonians, who are not in areas where cable exists, would be left with only one satellite broadcast provider. This case was a good reminder that we must remain vigilant in protecting the rights of our rural customers who do not have the wide array of media choices that exist in our urban centers.

I believe our efforts and the FCC's policy in reviewing media mergers should continue to coincide. During the Echostar merger, Chairman Powell commented that by fostering greater competition the FCC can reduce the need for further regulation and I agree with that general principle. However, I also believe that the FCC should remain diligent about continuing to regulate in those areas in which competition has not yet come to fruition or where barriers to competition remain. I understand the FCC intends to work very closely with the DOJ on future merger reviews and I look forward to a continuing dialogue on those issues.

My final concern is that any sweeping deregulation would have a dramatic impact on access to and availability of information to our citizens. A free and independent media is a key element in our democracy and it is important that the Commission preserve availability of information so that our citizens can make informed political and economic decisions.

The airwaves are public property. This is not simply a case of business regulation. The FCC has a duty to the American public to protect not only business competition, but localism, diversity, and vitality of public discourse in the use of this property. Media owners have no right to unrestricted, unregulated access and control of this valuable resource. The corporate media owners who benefit from free use of the airwaves also have an obligation to the public to use this property in the public interest.

How will the public interest and diversity of voices and opinions be served if broadcast media cannot only own multiple TV stations in one market, but one or more newspapers in the same market? Is the public interest served if the Duopoly Rule is eliminated and one corporation could eventually own all broadcast television stations in particular markets? Will elimination of the dual network rule result in mergers that further reduce the number of major television networks in the country?

Given the significance of these issues, prior to making any decision regarding the existing rules, the FCC must ensure that the public is aware of the issues that are at stake and there must be a meaningful opportunity for comment and participation by all affected interests. I strongly encourage the FCC to undertake additional efforts to inform the public and to schedule more hearings nationwide to provide adequate review of the issue.

Once again, thank you for taking the time to hold a field hearing in Seattle. Please do not hesitate to contact me if you have any questions on my comments.

Sincerely,

Christine O. Gregoire

CHRISTINE O. GREGOIRE
Attorney General

COG:rjp

cc: Marlene Dortch, Secretary of the FCC